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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. [REDACTED] 115 *A*

THE INTEROCEAN OIL COMPANY, APPELLANT.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

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FILED JUNE 25, 1926

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103-1117

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 482

THE INTEROCEAN OIL COMPANY, APPELLANT,

vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 23, 1924



[fol. 1]

IN THE COURT OF CLAIMS

No. D-267

THE INTEROCEAN OIL COMPANY

v.

THE UNITED STATES

I. PETITION—Filed April 2, 1924

To the Honorable the Court of Claims:

The Claimant, The Interocean Oil Company, respectfully represents:

I. Claimant is a corporation duly organized according to law, and on and prior to April, 1918, was engaged in refining, transporting and dealing in petroleum and petroleum products, chiefly fuel oil, in Carteret, in the Borough of Roosevelt, Middlesex County, New Jersey, it being the owner of certain real estate consisting of, to wit, seventeen (17) acres, and known as the Interocean Oil Company holding, situated on the south side of Rahway Avenue, running south for a distance of nine hundred (900) feet, more or less, on Staten Island Sound, together with improvements thereon consisting of an oil refinery with storage tanks and various appurtenances thereto, this real estate and physical improvements then and there being worth at least the sum of Four Hundred and Forty Thousand (\$440,000.00) Dollars.

II. During, to wit, January, 1918, when the Quartermaster Department, United States Army, was established in Baltimore, Maryland, [fol. 2] land, to aid in supplying army transports with fuel oil during the war with Germany, Claimant was represented in that city by Harold F. Brown, in the sale of fuel oil to the Shipping Board and the United States Navy, and said Brown learned that the Quartermaster Department, United States Army at Baltimore, Maryland, required fuel oil for their transports, and arrangements were made by him with Major John Hervey Ross, Quartermaster Department, United States Army, acting under the directions of Colonel Amos W. Kimball, in charge, for the purchase by the Quartermaster Department of fuel oil for transports. Difficulty had been experienced by the Government in obtaining at Baltimore, fuel oil satisfactory for the army transports, and under the direction of Major Ross, experiments were made by mixing the heavy gravity oil of the Claimant and the light gravity oil of the Standard Oil Company which resulted in obtaining a satisfactory grade of fuel oil. Major Ross then directed said Brown, Agent of the Claimant, to be prepared to furnish the full amount of fuel oil requirements of the Quartermaster Department, and he, the said Ross, was solicitous lest the amount of storage for fuel oil at the refinery of the Claimant at Baltimore might not be

ample for their purposes in case the Quartermaster Department should need more fuel oil than they were taking at that time. All the Army transports operating from the port of Baltimore were fuel oil burners and were large passenger-carrying vessels, some carrying both supplies and troops. Major Ross repeatedly demanded more storage for fuel oil at Baltimore and he was told by said Brown that Claimant could not purchase material for the erection of tanks for the storage of oil at that time as the available supplies of steel plates were in demand [fol. 3] for other war purposes and were carefully guarded and distributed by the Government. These conversations developed the fact that the Claimant owned at Carteret facilities for the storage of over 100,000 barrels of oil which might be dismantled, shipped to Baltimore and re-erected on the property of the Claimant there. The removal of the storage tanks was then demanded by Major Ross.

III. On, to wit, April 7, 1918, Major Ross, acting under orders of Colonel Amos W. Kimball, United States Army, in charge of the Quartermaster Department, Baltimore, Maryland, visited the general offices of the Claimant, 90 West Street, New York City, New York, and informed Mr. R. R. Govin, President of the Interocean Oil Company, in the presence of Mr. R. G. Upham, Vice President, and Mr. G. W. S. Whitney, of the said Interocean Oil Company, the Claimant in this cause, that the Quartermaster Department was short of fuel oil at the port of Baltimore, Maryland, and stated that it was impossible to increase the fuel oil facilities there without additional tankage and that he, Major Ross, would have to take the tankage of the Claimant then at Carteret, New Jersey, and remove the same to Baltimore, Maryland, as an exigency of war; therefore that the Carteret Station must be abandoned at once and the equipment forwarded to Baltimore to enlarge the storage capacity for fuel oil there and that if Claimant was willing to transfer these tanks on behalf of and for the use of the Government such action would be entirely satisfactory to the Quartermaster Department; but in case of the refusal of the Claimant to comply with this demand he, Major Ross, stated that the Quartermaster Department would seize the tanks and forward them to Baltimore. [fol. 4] Major Ross further assured Claimant that such service involving all expense incurred, including transportation, the use and value of the property and all losses of whatsoever nature that should be sustained would be paid by the Government. Claimant, by its President, R. R. Govin, explained to Major Ross that this action would mean the destruction of the established business of the Interocean Oil Company, the Claimant, in New York, and Mr. R. D. Upham, Vice-President, and Mr. Geo. W. S. Whitney, Secretary, respectively, of said Interocean Oil Company, being called in, the conversation as stated in the foregoing was repeated in their presence and Major Ross assured these officers of the Interocean Oil Company, the Claimant, that the said Interocean Oil Company would be compensated for all loss and damage, and furthermore that if said Claimant did not undertake to transport the equipment to Baltimore and to re-erect it there, the property would be seized by the Quartermaster Department and the Quartermaster Department would itself undertake the work

of removal. He desired, however, that this work of removal should be performed by the Claimant because of the superior knowledge and skill of its employees for doing such work rapidly. The fact that all verbal orders given by Major Ross to Mr. Harold F. Brown, the Claimant's agent at Baltimore, Maryland, were always confirmed by written orders, convinced the Claimant that Major Ross was acting within the scope of his authority, the removal of the oil tanks being for the same general purpose of obtaining fuel oil supplies as were other orders Major Ross had given verbally and in due time had followed up with confirmatory written orders. Major Ross on this occasion stated in unequivocal language that in making this demand he was authorized to act for the War Department and that [fol. 5] written official confirmation of his orders for the removal of the plant to Baltimore, Maryland, would be forthcoming from the War Department. Confidence was expressed by every one present on this occasion that the Claimant could remove the tanks from Carteret and re-erect them in Baltimore, Maryland, more promptly than could the Government.

IV. Prior to the time of the meeting of Major Ross, Mr. R. R. Govin, Mr. R. D. Upham and Mr. G. W. S. Whitney in the general office of the Claimant at 90 West Street, New York City, New York, on, to wit, April 7, 1918, referred to in the foregoing paragraph, and for a period of several months theretofore, Major Ross had made numerous and sundry purchases of fuel oil at Baltimore, Maryland, from the Claimant, almost all of which orders were given by him verbally to Mr. Harold F. Brown, agent of the said Claimant, and acted upon by said Brown promptly, written confirmation of such orders in each case being furnished to the said Brown at a later date, and in every case the written orders confirming the verbal orders were in exact conformity with the verbal orders and prompt payment for fuel oil supplies was made in every case. So accustomed was Mr. Brown and other representatives of the Claimant to act with promptness upon all verbal orders issued by Major Ross, who assured them that he was acting under the authority of Colonel Kimball, who was duly authorized by the Quartermaster Department of the United States Army to do all things necessary to obtain the prompt delivery of fuel oil for the government transports, that said Brown had come to comply without question to every order received by him from Major Ross, depending upon future confirmation of such orders in writing which he always received.

[fol. 6] V. Major Ross had informed said Brown, agent of the Claimant, that if any of his orders were not promptly complied with the Quartermaster Department would requisition the plant of the Claimant at Baltimore and take over its operation, and all of his acts being confirmed by written orders gave ample evidence that he possessed a broad scope of authority and that he was acting within his authority and had power to force immediate compliance with his demand to take over the plant of Claimant on behalf of the War Department; and when the agent of the Standard Oil Company at Baltimore hesitated about sending Standard light fuel oil to the

plant of the Claimant to be mixed with Claimant's heavy fuel oil, Major Ross threatened to commandeer the Standard Oil supplies if his orders were not promptly obeyed, and that threat obtained prompt compliance by the representative of the Standard Oil Company, this incident confirming in the mind of said Brown, agent of the Claimant, that Major Ross had power to completely control his actions in respect to the delivery of fuel oil supplies.

VI. When Major Ross gave verbal orders for the removal of the oil storage tanks from Carteret to Baltimore, he stated that he was acting for the War Department under competent authority and that he would furnish satisfactory confirmatory orders in writing to this effect and later when his attention was called to his failure to do so, he stated that such failure had resulted from his oversight and promised that these written confirmatory orders would at once be forthcoming from Colonel Kimball and furthermore that everything he was doing was in compliance with official action by the War Department.

[fol. 7] VII. Later Major Ross stated that he had made out and delivered these confirmatory written orders to Colonel Kimball and that said Colonel Kimball would sign and deliver them to Claimant, as evidence that proper official authority was being exercised. However, about that time the said Colonel Kimball was separated from the service of the War Department and, going abroad in ill health died without ever having delivered such confirmatory written orders to Claimant.

VIII. Removal by Claimant of the storage tanks from Carteret, New Jersey, to Baltimore, Maryland, was begun with all dispatch and was far advanced when the signing of the Armistice, November 11, 1918, made their use unnecessary for the purpose of the War Department, and they were not re-erected and in condition for use at Baltimore, Maryland, until, to wit, February, 1919.

IX. Upon the close of hostilities by the Armistice of November 11, 1918, when the Claimant desired to re-establish its oil plant at Carteret, it found itself unable to do so because of the provisions contained in the New Jersey Municipalities Act (Chapter 152 Laws of 1917), this legal obstruction causing a total inability to further utilize that property for oil refining purposes, resulting in the complete destruction of the franchise of the Claimant.

X. After the removal of said oil storage tanks and the dismantling of the plant of the Claimant in the Borough of Roosevelt, the Borough Council of Roosevelt by an act entitled "An Ordinance to Provide for the Protection of Life and Property from Fire, Explosion and Other Damages," gave effect to the New Jersey Municipal Act [fol. 8] (Chap. 152 Laws of 1917), thus giving official expression to its purpose to enforce provisions of Laws of 1917 in respect to the storage of inflammable materials, etc., in conformity with its known policy of which there had been common knowledge within the Borough of Roosevelt, from the time of the removal of the Claimant's

plant from Carteret to Baltimore, Maryland, and was in the nature of a warning to the Claimant not to attempt to reestablish its plant in the Borough of Roosevelt, thereby greatly decreasing the value of said property which could not longer be used for the purpose of an oil refinery which was the most valuable use to which it could be put.

XI. The Clerk of the Council of the Borough of Roosevelt stated as shown in Exhibit 1, attached hereto, that had not the Claimant's plant been removed from Carteret, it would not have been interfered with by the Council; it having been established legally for oil refining purposes as early as 1913 with the consent of said Municipal Council; but its removal having come to the attention of the Council, said Council let it be known that it was ready at all times to pass a prohibitive ordinance whenever any attempt should be made by the Intercean Oil Company, the Claimant, to reestablish its oil refining plant at Carteret, and Claimant had full knowledge of this intention of said Council of the Borough of Roosevelt, and said Council did on March 13, 1922, enact the ordinance it had been prepared to enact at all times after the removal of the plant of the Claimant, this action being taken under the authority of the New Jersey Municipalities Act (Chapter 152 Laws of 1917).

XII. As a result of the removal of its plant from Carteret, New [fol. 9] Jersey, to Baltimore, Maryland, Claimant not only having suffered loss in the decreased value of its real estate holdings by reason of the inhibition of the Council of the Borough of Roosevelt in preventing the use of this property for oil refining purposes, which was the chief value of the site because of its proximity to the port of New York, no other site being available, but the Claimant has also lost its own right to carry on the business of oil refining at Carteret and this franchise to conduct its business near the port of New York had a large value, aggregating to wit \$1,000,000.

XIII. While Claimant believes and therefore avers that the facts aforesaid entitle it to recover under its said verbal contract with the War Department, if the Court shall deem that such a promise was not binding, it further claims, in the alternative, that it is entitled to a reasonable compensation for the services rendered and for the damage sustained by it in complying with the demands of the War Department in time of war in the furnishing of necessary facilities for supplying fuel oil for the efficient conduct of the war.

XIV. No other action is now pending, nor has any other action been had, on said claim in Congress or in any of the departments; no person other than the Claimant is the owner thereof or interested therein; no assignment or transfer of this claim, or any part thereof or interest therein, has been made; the Claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; the Claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government. The Claimant is a citizen of the United [fol. 10] States and the Claimant therefore claims:

1. Actual expense incurred in taking down plant at Carteret, freight to Baltimore, Md., and its re-erection at Baltimore	\$53,697.21
2. Depreciation in the value of its real estate remaining at Carteret, N. J., removal of said four oil tanks and subsequent legal obstructions prohibiting the re-establishment of the oil refinery at Carteret, N. J.	220,740.00
3. Loss of franchise to conduct business of Claimant at Carteret resulting from the removal of the plant and the subsequent passage of the ordinance of the Borough of Roosevelt forbidding a resumption of the former use of the plant as an oil refinery	1,000,000.00
4. Loss of labor, material etc., being the difference between original cost of equipment sent to Baltimore and the value of the plant at cost shipped	7,820.52
5. Our crude oil storage at Carteret, N. J. refinery was 120,000 barrels. Of this 70% or 84,000 barrels, was available for use for fuel oil sales. A minimum turnover of twice a month would amount to 168,000 barrels or 7,056,000 gallons (42 gallons per barrel) per month and could have been marketed. The profit on these sales would have been $\frac{1}{2}$ cent per gallon or \$35,280 per month, a total of \$423,360 per year, and for the period April, 1918, to October 1, 1923.....	2,293,200.00
Total loss of	\$3,575,457.73

(Signed) John Paul Earnest, Attorney for Claimant.

[fol. 11] Jurat showing the foregoing was duly sworn to by R. D. Upham omitted in printing.

[fol. 12]

COURT OF CLAIMS

INTEROCEAN OIL CO. EXHIBIT No. 1

I, Walter V. Quin, being first duly sworn deposes and says, that I was Borough Clerk of Roosevelt, Middlesex County, New Jersey, for thirteen years ending 1922; that had the Intercean Oil Company, after the removal of its plant from Carteret in 1918, attempted to reinstate said plant or any similar oil refining plant on the site previously occupied by it, in Carteret, such reinstatement would have been prohibited by the Borough Council in conformity with the terms of the ordinance of March 13, 1922, based on Chapter 152 Laws of 1917 State of New Jersey. Furthermore, it was the purpose of the Council of the Borough of Roosevelt and known

to the Interocean Oil Company, from the time the oil refining plant of the Interocean Oil Company was removed from Carteret until the passage of the ordinance of March 13, 1922, that the Borough Council would prohibit the reestablishment of its oil refining plant on the site it formerly occupied.

(Signed) Walter V. Quin.

Subscribed and sworn to before me this 20th day of November, 1923. (Signed) Julia Mitchell, Notary Public, Bronx County, No. 29. New York County Clerk's No. 225. Register's No. 5257. Term expires Mch. 30, 1925. (Seal.)

[fol. 13] II. DEFENDANT'S DEMURRER—Filed Apr. 25, 1924

Defendant demurs to the above-entitled petition for the reason that it does not state a cause of action against the United States.

Robert H. Lovett, Assistant Attorney General. W. F. Norris, Special Assistant to the Attorney General.

III. ARGUMENT AND SUBMISSION OF DEMURRER

On May 19, 1924, the demurrer in this case was argued and submitted by Mr. W. F. Norris, for the defendant, and by Mr. John Paul Earnest, for the plaintiff.

[fol. 14] IV. ORDER OF COURT SUSTAINING DEFENDANT'S DEMURRER AND DISMISSING PETITION

This cause was submitted upon the defendant's demurrer to the plaintiff's petition. Upon consideration whereof the court is of the opinion that said demurrer is well taken. It is therefore ordered this 26th day of May, 1924, that the defendant's said demurrer be and the same is sustained, and the petition is dismissed.

By the Court.

V. PLAINTIFF'S APPLICATION FOR AND ORDER ALLOWING APPEAL

From the judgment rendered in the above-entitled cause on the 26th day of May, 1924, in favor of defendant, the plaintiff, makes application for, and gives notice of, an appeal to the Supreme Court of the United States.

John Paul Earnest, Attorney for Plaintiff. Charles E. Kern, of Counsel.

Ordered: That the above application for appeal be allowed as prayed for.

By the Court.

Entered June 16, 1924.

[fol. 15] COURT OF CLAIMS OF THE UNITED STATES

[Title omitted]

CLERK'S CERTIFICATE

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case on demurrer; of the order of the court sustaining the defendant's demurrer and dismissing the petition; of the plaintiff's application for appeal and of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this Twenty-fourth day of June, A. D. 1924.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. (Seal of the Court of Claims.)

Endorsed on cover: File No. 30,447. Court of Claims. Term No. 482. The Intercean Oil Company, appellant, vs. The United States. Filed June 25th, 1924. File No. 30,447.

(3594)

